

SECTION H -- SPECIAL CONTRACT REQUIREMENTS

H.1 PERIOD OF PERFORMANCE

The contract base period of performance of four (4) years, with the exception of Ship Groups 6 and 11, may be extended by exercising option(s), up to an additional six (6) years, two 3-year award term periods on the overall contract performance. The total maximum period of performance under this contract, if the Government exercises all award term incentive options is (10) ten years inclusive of the base period. These additional award term incentive option periods will be awarded by the Government based on overall contractor performance as evaluated in accordance with the contract's approved Award Term Incentive Option Plan (ATIOP).

H.2 AWARD TERM INCENTIVE OPTION PLAN

The Award Term Incentive Option Evaluation Plan (ATIOP), Attachment J-12, provides for the evaluation of both technical and price performance, and serves as the basis for any award term and additional vessels option decision. The ATIOP may be unilaterally revised by the Government and re-issued to the Contractor no later than fifteen (15) days prior to the commencement of the next evaluation period. Any changes to the ATIOP will be made in writing and incorporated into the contract through a unilateral modification citing this clause. The Government will consult with the Contractor(s) prior to the issuance of a revised ATIOP, but is not required to obtain the Contractor(s) consent to the revisions. A Term Determining Official (TDO) shall be appointed by the Government and is responsible for the overall award term evaluation and award term/additional vessels decisions. The TDO will unilaterally decide whether or not the contractor has earned an award term incentive option extension. The TDO will designate an Award Term Review Board (ATRB).

H.3 GOVERNMENT'S RIGHT TO EXERCISE THE AWARD TERM INCENTIVE OPTION

The Government has the unilateral right not to exercise cancel the Award Term Incentive Option of the contract if:

- (1) the contractor has failed to earn an award term by end of the third year of contract performance,; or
- (2) if after earning itt's first award term the contractor fails to earn an award term in any succeeding year of contract performance, or;
- (3) services are no longer needed, or;
- (4) option exercise would be inconsistent with FAR Subpart 17.2

If the CO does not exercise the options, the contract period of performance ends at the current contract period of performance. Cancellation of an award term option that has not yet commenced for any of the reasons set forth in this clause shall not be considered either a termination of convenience or a termination for default, and shall not entitle the contractor to any termination settlement or any other compensation. If the CO determines that either conditions (1) or (2) above apply, and cancels the award term option incentive, then the resulting unilateral modification will cite this clause as the authority.

H.4 ORGANIZATIONAL CONFLICT OF INTEREST

a. The Ship Manager warrants that, to the best of its knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, and that all such relevant information has been disclosed.

b. The Ship Manager agrees that if an actual or potential organizational conflict of interest is discovered after award, the Ship Manager will make a full disclosure in writing to the ACO. This disclosure shall include a description of actions, which the Ship Manager has taken or proposes to take, after consultation with the ACO, to avoid, mitigate, or neutralize the actual or potential conflict.

c. Remedies - The Government may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the SM was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the PCO, the Government may terminate the contract for default, debar the SM from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

d. The Ship Manager is required to ensure adherence to this clause in its capacity as a manager of public vessels. Ship Managers, their parent companies or subsidiaries are prohibited from bidding on work for which they wrote the specifications unless specifically authorized by MARAD.

e. The Ship Manager further agrees to insert provisions, which shall conform substantially to the language of this clause, including this paragraph (de), in any subcontract or consultant agreement hereunder.

H.5 REFUNDS, REBATES, AND CREDITS

As described in FAR 52.216-7 Allowable Cost and Payment (Dec 2002), the Ship Manager shall pay to the Government any funds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Ship Manager or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Ship Manager has been reimbursed by the Government. Contract closeout procedures shall include a signed statement by the Ship Manager that this was completed or is not applicable.

H.6 EMPLOYMENT OF GOVERNMENT PERSONNEL

In performing this contract, the Ship Manager shall not use as a consultant or employ (on either a full or part-time basis) any active duty military personnel or Government civilian employees without the prior approval of the ACO. Such approval may be given only in circumstances where it is clear that no laws or no DOT, DOD or Service instructions, regulations, or policies might possibly be contravened and no appearance of a conflict of interest will result.

H.7 UNUSUAL EMERGENCY, NATURAL DISASTER, CONTINGENCY MOBILIZATION AND/OR WAR

- a. The Ship Manager and its employees agree to obey the lawful directives issued by the Maritime Administrator, Secretary of Defense and/or President of the United States in all cases relating to unusual emergency, natural disaster, contingency, mobilization and/or war.
- b. The Government shall reimburse the Ship Manager for its actual out-of-pocket expenses, including all taxes, for (1) any war risk bonuses, extra wages based on the areas to be traversed during, or the ports of call of, any voyage hereunder; (2) any required payments to the officers or crew of the ship necessarily incurred by reason of orders or direction of the Government which require the Ship Manager to breach existing Articles of the crew or contracts with the officers, provided such Articles and contracts comply with the instructions of the Government and are over and above the terms and condition of this contract. However, any war risk bonuses and/or extra wages granted by the Government, and based on the areas to be traversed or the ports of call of any voyage hereunder shall not exceed what would be payable, under applicable laws and regulations, to civilian mariners, in the employ of MARAD's Ship Manager, for service on the ship if the ship were privately owned on the same voyage.
- c. War risk bonuses and/or extra wages paid for traversing combat areas or war-hazard zones shall be allowable costs under this contract only if those areas have been so designated by the Secretary of Defense or others, as may be delegated by the Secretary of Defense.

H.8 STATUS OF VESSELS

The ships to be operated under this contract are public vessels of the United States. Material conditions, personnel appearance, discipline, customs and usage should be maintained at a high professional standard such that the operation of these ships will not bring criticism or discredit upon the U. S. Government.

H.9 SALVAGE

Settlements for salvage services rendered to other vessels, including those owned or controlled by the United States, shall be handled by, and are under the control of the Government. All salvage monies earned, including recovery of fuel consumed and hire during the salvage operation, by any ship hereunder shall issue to and be for the account of the Government after deducting Master's and Crew's share. It is mutually understood and agreed that the Ship Manager shall not be entitled to nor participate in any salvage or salvage awards hereunder. The Ship Manager shall promptly furnish the Government with full reports and information on all salvage services rendered or received.

H.10 SHIP'S STORES AND MATERIALS

Pursuant to authority of the Defense Production Act of 1950, as amended, and provisions of the Business and Defense Service Administration Regulation No. 1, when instructed by the ACO, the priority rating DO-A3 shall be used to obtain ratable ships' stores and controlled ships' materials required under this contract.

H.11 UNITED STATES CITIZENSHIP

Given the essential defense function of a contract award under this solicitation, each contractor must satisfy the following criteria throughout the performance of this contract.

- a. Meet citizenship requirements as defined in 46 CFR 315 and 46 U.S.C.802(a) and 802 (b).
- b. As part of this process, Contractor must annually submit to the PCO evidence of continuing U.S. citizenship status, including a current Affidavit of United States Citizenship and any changes to other documents previously submitted in connection with establishing the U.S. citizenship of the Contractor. This annual submission should be filed within thirty (30) days after the annual meeting of the stockholders or annually, within thirty (30) days after the original affidavit if there has been no meeting of the stockholders prior to that time. See Section K.7, Affidavit of United States Citizenship.
- c. Contractor shall submit promptly to the PCO any changes in the information set forth in its current Affidavit of U. S. Citizenship and other documents submitted in connection with establishing the U. S. Citizenship of the Contractor.

H.12 PORT CHARGES AND EXPENSES

- a. Except as otherwise provided herein the Government will pay expenses of loading and unloading cargo, canal tolls, dues, taxes and similar port charges imposed by public authority including consular charges (all of the foregoing except as pertaining to non-official expenses of the Master, officers and crew), incurred by the ships in ports visited pursuant to the Government's direction. The Government shall pay sales taxes, and similar taxes, and foreign taxes to the extent accepted by the Government as port expenses hereunder, provided the Ship Manager shall have used due diligence to secure immunity from such taxes. Any tax or duty from which the U. S. Government is exempt by agreement with any foreign government, or from which the Ship Manager or any subcontractor is exempt under the laws of any country, shall not constitute an allowable port expense under this contract, unless the Ship Manager has used diligence to obtain exemption and has paid under protest.

The Government shall also pay all expenses incurred by the ships in aforesaid ports, which although not imposed in the instant case by public authority, are usually imposed by public authority, such as wharfage or dockage.

The Government further agrees to pay all expenses necessary incurred by the ships entering or leaving the aforesaid ports (including agent and custom broker fees).

- b. The Government shall also pay for (1) pilotage of the ships where such pilotage is customary, or where the ships are required by the Government to enter or transit a hazardous or restricted area or body of water; and (2) pilotage or towage in connection with the bunkering or ballasting of the ships, or in shifting the ships in accordance with the orders of the Government. Nothing herein shall be construed as requiring the Government to pay expenses incurred by the Ship Manager for services rendered for the convenience of the Ship Manager, the ship or her Master, officer or crew, or in connection with the Ship Manager's business such as fees of underwriters, or expenses in moving the ship about the port to obtain stores or provisions. All of the charges

and expenses which are incurred for the Government's account as aforesaid will be paid by the Ship Manager, who shall be reimbursed by the Government upon presentation of properly certified vouchers and supporting receipts.

c. All fees of agents as defined in Section C, PWS, appointed by and used by the Ship Manager to husband the ships, including the fees of the agents appointed for canal transits and at bunkering ports, shall be reimbursable pursuant to the instructions of the Government provided that such fees shall not exceed those customarily charged commercial vessels for similar services.

H.13 OPERATING LIMITS

Operating limits shall be worldwide.

H.14 CERTIFICATION OF SEPARATE BUSINESS ENTITY

Requirement to be and remain a separate business entity and annual recertification to remain separate throughout the life of the contract.

H.15 PENSION PLAN WITHDRAWAL LIABILITY

MARAD's payment to the Ship Manager for crew salaries and benefits includes the contribution which the Ship Manager makes to any multi-employer union pension plan for: (a) pension contributions during the time of employment onboard NDRF or RRF vessels, (b) medical insurance plans, or (c) any other contribution required by the contract between the Ship Manager and the union representing the Master and members of the crew.

MARAD's payment to the Ship Manager for crew salaries is not to be construed as creating any responsibility or liability for payment of amounts which may be assessed by the trustees of a multi-employer pension plan against a Ship Manager for the complete or partial withdrawal by the Ship Manager from a multi-employer pension plan.

H.16 SUBCONTRACTING OF SHIP MANAGER DUTIES

The Ship Manager shall comply with FAR 52.244-2, Subcontracts (Aug 1998), contained in Section I of this contract, and obtain the PCO's written consent before placing any subcontract exceeding the stated thresholds for performance of Ship Manager duties throughout the life of this contract as described herein. The Ship Manager shall also obtain the PCO's written consent prior to altering its RRF organizational structure.

H.17 ACTIVATION/OPERATION PER DIEM

a. For No-Notice Activations: Ship Manager per diem and ROS crew wages change to Operations per diem/FOS reimbursable respectively, upon telephonic notification to the Ship Manager by any of the personnel authorized for "activation notification" in Section G.6.

b. Notice Activation. The Ship Manager shall remain in Phase M per diem. Upon the arrival of the first non-ROS crewmember, all crewmembers wages will transition to reimbursable FOS wages. Ship Manager per diem becomes Phase O corresponding to the readiness and deliver date. For example, if the vessel is ROS-5, Phase O starts for the Ship Manager when the vessel would normally have received an activation message of five (5) days before required date.

c. Maintenance Activation: is scheduled in the Business Plan including phase O wages for the crew. Upon the arrival of the first non-ROS crewmember, crew wages transition from ROS to FOS for the entire crew. The Ship Manager per diem remains in Phase M throughout the maintenance activation. See CLIN for SM without ROS crew.

H.18 MARAD NATIONAL DEFENSE RESERVE FLEET SAFETY RULES FOR CONTRACT PERSONNEL

Contractor personnel shall abide by the General Safety Rules found in the NDRF Fleet manual (see technical library.) Each fleet may supplement these general guidelines with its own rules. Contractors shall obtain a copy of the rules from the Fleet Superintendent before commencing any work.

H.20 NONDISCLOSURE OF DATA AND INFORMATION

The Contractor shall include this clause in all major subcontracts.

1. The Contractor, and any of its subcontractors in the performance of this contract, may have need for access to and use of various types of data and information in the possession of the Government which the Government obtained under conditions which restrict the Government's right to use and disclose the data and information, or which may be of such a nature that its dissemination or use other than in the performance of this contract, would be adverse to the interests of the Government or other parties. Therefore, the Contractor and its subcontractors agree to abide by any restrictive use conditions on such data and not to:

(a) Knowingly disclose such data and information to others without written authorization from the CO, unless the Government has made the data and information available to the public; and

(b) Use for any purpose other than the performance of the contract that data which bears a restrictive marking or legend.

2. Except as the CO specifically authorizes in writing, upon completion of all work under this contract, the Contractor shall return all such data and information, including all copies, modifications, adaptations, or combinations thereof, to the CO. The Contractor shall further certify in writing to the CO that all copies, modifications, adaptations or combinations of such data or information which cannot reasonably be returned to the CO, have been deleted from the Contractor's (and any subcontractor's) records.

3. These restrictions do not limit the Contractor's or subcontractor's right to use and disclose any data and information obtained from another source without restriction. As used herein, the term "data" has the meaning set forth in Department of Transportation Procurement Regulations, 48

CFR 1252.227-71, "Rights in Data - General", and includes, but is not limited to, computer software, as also defined in 48 CFR 1252.227-71.

H.22 NOTICE OF PARTIAL RESERVE FOR SMALL BUSINESSES (FAR DEVIATION)

(a) Definitions. The definitions in FAR Part 19 and 13 C.F.R. Part 121 apply to this clause.

“Small business concern,” as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) General.

Rather than setting aside specific vessels or Ship Groups, MARAD will reserve for award to small businesses fifteen percent (15%) of the vessels, as identified elsewhere in this solicitation.

H.21 TOWING

It is strongly recommended that all towing subcontracts be awarded to towing companies whose towing vessels have a safety management certification from an industry-recognized program*. Where international tows are concerned, towing contracts shall be awarded to towing companies that comply with the ISM Code. Where towing services are required as part of an RRF “no-notice” ship movement, or other similar emergency ship movement (e.g., hurricane evacuation), attempted compliance with this requirement shall not be an acceptable cause for delay.

* Such as the ISM Code, the American Waterways Operators (AWO) Responsible Carrier Program, or any other safety management system recognized by the USCG.”

[END OF SECTION H]